

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 10-0274

IN THE MATTER OF:

M.C.B.,

A Youth in Need of Care.

FILED

JUN 15 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

**ATTORNEY GENERAL'S OBJECTION
TO OUT-OF-TIME APPEAL**

The Attorney General's Office, on behalf of the Department of Public Health and Human Services (Department), objects to the Appellants' petition for an out-of-time appeal.

According to the petition, following termination of their parental rights and prior to the appeal deadline running, the parents did not appear for a rescheduled meeting with their counsel to discuss a possible appeal. Under these circumstances, counsel's failure to file a timely appeal constitutes mere mistake, inadvertence, or excusable neglect, which by rule is not an extraordinary circumstance amounting to a gross miscarriage of justice for purposes of Mont. R. App. P. 4(6). The petition does not address whether an appeal would have had merit or a reasonable chance of success. Because

M.C.B. is in an adoptive placement and the Department is ready to finalize his adoption, the State respectfully objects to an out-of-time appeal.

Respectfully submitted this 15th day of June, 2010.

STEVE BULLOCK
Montana Attorney General
Justice Building
P.O. Box 201401
Helena, MT 59620-1401

By: Mark W. Mattioli
MARK W. MATTIOLI
Appellate Services Bureau Chief

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing Attorney General's Objection to Out-Of-Time Appeal to be mailed to:

Ms. Nancy Sweeney
Clerk of the District Court
Lewis and Clark County Courthouse
228 Broadway
Helena, MT 59601

Ms. Tara Harris
Deputy Lewis and Clark County Attorney
228 Broadway
Helena, MT 59601

DATED: 6/15/10 Mark W. Mattioli

CERTIFICATE OF COMPLIANCE

Pursuant to Rules 11 and 14 of the Montana Rules of Appellate Procedure, I certify that this response to writ is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is not more than 4,000 words, excluding certificate of service and certificate of compliance.



MARK W. MATTIOLI